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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,457	12/15/2003	Erik J. van der Burg	014139US	3098
38107 7590 01/05/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P. O. Box 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER				
BATES, DAVID W				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
01/05/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/736,457

Applicant(s)

VAN DER BURG ET AL.

Examiner

DAVID W. BATES

Art Unit

3775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-26 and 33-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-32 and 46-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/27/2004
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of Group II (claims 27-32 and 46-49) in the reply filed on September 18, 2009 is acknowledged.
2. Claims 1-26 and 33-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 18, 2009.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 27-32 and 46-49 is rejected under 35 U.S.C. 102(b) as being anticipated by Nakajima (US 6,355,036 B1).

5. Regarding claims 27, 29-32 and 46, Nakajima teaches:

**An implant for attachment to a hyoid bone** (a bone adjuster 20, attached to bone in fig. 4), **comprising:**

**an implant body** (lift plate 22);

**a first attachment zone** (mounting plate 28) **configured for attachment to a first portion of a hyoid bone;**

**a second attachment zone** (mounting plate 42) **configured for attachment to a**

**second portion of a hyoid bone;**

**a connection between the first and second attachment zones** (at hinge 36, the connection is formed due to all components being "connected to one another") **which allows movement of the first and second attachment zones with respect to each other; and**

**a lock carried by the body** (adjusting shaft 26), **for fixing the relationship between the first and second attachment zones** (moves the two attachment zones in relation to one another).

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The attachment assembly of Nakajima is capable of use in any bone in the body by simple changes to the embodiment disclosed (change in size/orientation, col. 7, lines 52-62).

6. Regarding claim 28, the hinge 36 is capable of bending, and is therefore considered to be "flexible".

7. Regarding claims 47-49, the description of the type of pharyngeal structure the implant is used in is regarded as being merely a recitation with respect to the manner in which the claimed apparatus is intended to be employed and does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. The device of Nakajima is capable of being used in such situations as bone and muscle by use of different connection devices in conjunction with the device (screws, cerclage wires, tacks, sutures, etc.).

**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Huebner (US 7,189,237 B2)
- Christensen (US 3,488,779)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is (571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. W. B./  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art

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